

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JUSTIN MICHAEL BROWN,

Plaintiff,

v.

CAROLYN W. COLVIN,
Commissioner of Social Security,

Defendant.

No. CV-12-0513-JTR

ORDER GRANTING
DEFENDANT'S MOTION
FOR SUMMARY JUDGMENT

BEFORE THE COURT are cross-Motions for Summary Judgment. ECF No. 15, 17. Attorney Maureen J. Rosette represents Justin Michael Brown (Plaintiff); Special Assistant United States Attorney Franco L. Becia represents the Commissioner of Social Security (Defendant). The parties have consented to proceed before a magistrate judge. ECF No. 6. After reviewing the administrative record and briefs filed by the parties, the Court **GRANTS** Defendant's Motion for Summary Judgment and **DENIES** Plaintiff's Motion for Summary Judgment.

JURISDICTION

Plaintiff filed an application for Supplemental Security Income (SSI) benefits on February 24, 2010, alleging disability since March 1, 2006, due to ADD/ADHD, depression and bipolar condition. Tr. 111, 129. The application was denied initially and upon reconsideration. Administrative Law Judge (ALJ) Marie

1 Palachuk held a hearing on July 26, 2011, Tr. 30-71, and issued an unfavorable
2 decision on September 12, 2011, Tr. 12-25. The Appeals Council denied review
3 on June 25, 2012. Tr. 1-6. The ALJ's September 2011 decision became the final
4 decision of the Commissioner, which is appealable to the district court pursuant to
5 42 U.S.C. § 405(g). Plaintiff filed this action for judicial review on August 20,
6 2012. ECF No. 1, 5.

7 **STATEMENT OF FACTS**

8 The facts of the case are set forth in the administrative hearing transcript, the
9 ALJ's decision, and the briefs of the parties. They are only briefly summarized
10 here.

11 Plaintiff was born on March 7, 1988, and was 21 years old on the date of the
12 application, February 24, 2010. Tr. 124. Plaintiff indicated he completed school
13 through the eighth grade, Tr. 130, and was attempting to take classes to obtain a
14 GED at the time of the administrative hearing, Tr. 51.

15 Plaintiff last worked at McDonalds in April 2009 and stopped working after
16 about a month. Tr. 52, 129. He stated he quit showing up for work because he
17 was supposed to be on the grill for a two-week period and then move up on the
18 scale, but he had not been moved up. Tr. 52. Plaintiff indicated the main issue
19 preventing him from being able to work is mood swings. Tr. 56.

20 Plaintiff testified depression makes him not want to get out of bed in the
21 morning and not want to be around people. Tr. 53. He indicated he just likes to lie
22 in bed and do nothing. Tr. 53. Plaintiff stated it was also difficult to socialize. Tr.
23 54. He indicated he has daily mood swings and has verbal fights multiple times a
24 week with his grandparents. Tr. 55. Plaintiff testified he also has trouble with
25 sleep and, as a result, felt fatigued during the day. Tr. 56. Plaintiff stated he used
26 to like to watch TV, play video games and ride his dirt bike during the day, but, for
27 reasons he was unable to articulate at the administrative hearing, he no longer
28 enjoys those activities. Tr. 58.

1 Plaintiff's grandfather, Roger Durham, also testified at the administrative
2 hearing. Tr. 60-65. Mr. Durham indicated that Plaintiff previously had issues
3 with drugs and alcohol, but Plaintiff went to substance abuse treatment and had
4 since been clean. Tr. 61. He stated that since Plaintiff had undergone treatment,
5 there had no longer been any issues with Plaintiff's anger and frustration. Tr. 61,
6 63-64. Mr. Durham indicated that Plaintiff's medication was now "absolutely"
7 working. Tr. 64. He stated "there's no question in my mind the amount of
8 progress that [Plaintiff] has made and we've seen in him." Tr. 64.

9 Joseph Cools, Ph.D., testified as a medical expert at the administrative
10 hearing. Tr. 38-48. Dr. Cools indicated that when Plaintiff began the recovery
11 process at the substance abuse center in 2011, Plaintiff's health status improved
12 dramatically. Tr. 42. Plaintiff became more active; regained stress management
13 skills; and was once again enjoying spending time with his son, being active on his
14 dirt bike, visiting his family and going to self-help groups. Tr. 42. Dr. Cools noted
15 that when Plaintiff was off alcohol and drugs, Plaintiff's mental status improved
16 with very little medication. Tr. 45-46. Dr. Cools also indicated Plaintiff did not
17 have relationship problems other than those generated by his usage of drugs and
18 alcohol. Tr. 47.

19 STANDARD OF REVIEW

20 In *Edlund v. Massanari*, 253 F.3d 1152, 1156 (9th Cir. 2001), the Court set
21 out the standard of review:

22 A district court's order upholding the Commissioner's denial of benefits is
23 reviewed de novo. *Harman v. Apfel*, 211 F.3d 1172, 1174 (9th Cir. 2000). The
24 decision of the Commissioner may be reversed only if it is not supported by
25 substantial evidence or if it is based on legal error. *Tackett v. Apfel*, 180 F.3d
26 1094, 1097 (9th Cir. 1999). Substantial evidence is defined as being more than a
27 mere scintilla, but less than a preponderance. *Id.* at 1098. Put another way,
28 substantial evidence is such relevant evidence as a reasonable mind might accept

1 as adequate to support a conclusion. *Richardson v. Perales*, 402 U.S. 389, 401
 2 (1971). If the evidence is susceptible to more than one rational interpretation, the
 3 Court may not substitute its judgment for that of the Commissioner. *Tackett*, 180
 4 F.3d at 1097; *Morgan v. Commissioner of Social Sec. Admin.*, 169 F.3d 595, 599
 5 (9th Cir. 1999).

6 The ALJ is responsible for determining credibility, resolving conflicts in
 7 medical testimony, and resolving ambiguities. *Andrews v. Shalala*, 53 F.3d 1035,
 8 1039 (9th Cir. 1995). The ALJ's determinations of law are reviewed de novo,
 9 although deference is owed to a reasonable construction of the applicable statutes.
 10 *McNatt v. Apfel*, 201 F.3d 1084, 1087 (9th Cir. 2000).

11 It is the role of the trier of fact, not this Court, to resolve conflicts in
 12 evidence. *Richardson*, 402 U.S. at 400. If evidence supports more than one
 13 rational interpretation, the Court may not substitute its judgment for that of the
 14 Commissioner. *Tackett*, 180 F.3d at 1097; *Allen v. Heckler*, 749 F.2d 577, 579
 15 (9th Cir. 1984). Nevertheless, a decision supported by substantial evidence will
 16 still be set aside if the proper legal standards were not applied in weighing the
 17 evidence and making the decision. *Browner v. Secretary of Health and Human*
 18 *Services*, 839 F.2d 432, 433 (9th Cir. 1988). If substantial evidence exists to
 19 support the administrative findings, or if conflicting evidence exists that will
 20 support a finding of either disability or non-disability, the Commissioner's
 21 determination is conclusive. *Sprague v. Bowen*, 812 F.2d 1226, 1229-1230 (9th
 22 Cir. 1987).

23 SEQUENTIAL EVALUATION PROCESS

24 The Commissioner has established a five-step sequential evaluation process
 25 for determining whether a person is disabled. 20 C.F.R. §§ 404.1520(a),
 26 416.920(a); *see Bowen v. Yuckert*, 482 U.S. 137, 140-142 (1987). In steps one
 27 through four, the burden of proof rests upon the claimant to establish a prima facie
 28 case of entitlement to disability benefits. *Tackett*, 180 F.3d at 1098-1099. This

burden is met once a claimant establishes that a physical or mental impairment prevents him from engaging in his previous occupation. 20 C.F.R. §§ 404.1520(a)(4), 416.920(a)(4). If a claimant cannot do his past relevant work, the ALJ proceeds to step five, and the burden shifts to the Commissioner to show that (1) the claimant can make an adjustment to other work; and (2) specific jobs exist in the national economy which claimant can perform. *Batson v. Commissioner of Social Sec. Admin.*, 359 F.3d 1190, 1193-1194 (2004). If a claimant cannot make an adjustment to other work in the national economy, a finding of “disabled” is made. 20 C.F.R. §§ 404.1520(a)(4)(i-v), 416.920(a)(4)(i-v).

DAA ANALYSIS

An otherwise disabled individual is not entitled to disability benefits under the Social Security Act if drug addiction and/or alcoholism (DAA) is a contributing factor material to disability. The Contract With America Advancement Act of 1996, Pub. L. No. 104-121 § 105(a)(C), amended the definition of disability under the Social Security Act to prohibit entitlement to disability benefits under Titles II and XVI for any individual whose disability is based on DAA. Title II of the Social Security Act now states: “An individual shall not be considered to be disabled for purposes of this title if alcoholism or drug addiction would (but for this subparagraph) be a contributing factor material to the Commissioner’s determination that the individual is disabled.” 42 U.S.C. § 423(d)(2)(c). Title XVI of the Social Security Act contains a similarly worded provision for purposes of determining eligibility for SSI disability benefits. 42 U.S.C. § 1382c(a)(30)(J).

The Commissioner’s disability regulations likewise state, “if we find that you are disabled and have medical evidence of your drug addiction or alcoholism, we must determine whether your drug addiction or alcoholism is a contributing factor material to the determination of disability.” 20 C.F.R. § 416.935(a). Specifically, the “key factor” the Commissioner “will examine in determining

1 whether drug addiction or alcoholism is a contributing factor material to the
2 determination of disability is whether we would still find you disabled if you
3 stopped using drugs or alcohol.” 20 C.F.R. § 416.935(b). “If we determine that
4 your remaining limitations would not be disabling, we will find that your drug
5 addiction or alcoholism is a contributing factor material to the determination of
6 disability.” *Id.*

7 If the ALJ finds the claimant disabled and there is medical evidence of
8 DAA, the ALJ must determine the materiality of the claimant’s DAA to his
9 disability. The ALJ must perform the sequential evaluation process a second time,
10 separating out the impact of the claimant’s DAA, to determine if he would still be
11 found disabled if he stopped using drugs or alcohol. *Bustamante v. Massanari*,
12 262 F.3d 949, 955 (9th Cir. 2001). The claimant bears the burden of proving that
13 DAA is not a contributing factor material to his disability. *Parra v. Astrue*, 481
14 F.3d 742, 744-745, 748 (9th Cir. 2007).

15 ADMINISTRATIVE DECISION

16 The ALJ found that Plaintiff had not engaged in substantial gainful activity
17 since February 24, 2010, the application date. Tr. 14. The ALJ determined, at step
18 two, that Plaintiff had severe impairments of polysubstance dependence and
19 depression. Tr. 14. At step three, the ALJ found Plaintiff’s mental impairments,
20 including the substance use disorder, met Sections 12.04 and 12.09 of the listed
21 impairments. Tr. 16. However, the ALJ then assessed Plaintiff’s impairments if
22 he stopped the substance use and determined that his impairments, alone and in
23 combination, did not meet or medically equal one of the listed impairments in 20
24 C.F.R., Appendix 1, Subpart P, Regulations No. 4. Tr. 17.

25 The ALJ assessed Plaintiff’s RFC if he stopped the substance use and
26 concluded Plaintiff could perform a full range of work at all exertional levels, but
27 with the following nonexertional limitations: he is capable of only occasional
28 interaction with the general public and his concentration, persistence and pace are

1 average. Tr. 19. The ALJ found Plaintiff's medically determinable impairments
2 could reasonably be expected to produce his alleged symptoms but that Plaintiff's
3 subjective complaints and alleged limitations were not fully credible. Tr. 19-24.
4 At step four, the ALJ found that if Plaintiff stopped the substance use, he would be
5 able to perform his past relevant work as a stock selector and groundskeeper. Tr.
6 24. Alternatively, the ALJ indicated that, considering Plaintiff's age, education,
7 work experience and RFC in conjunction with the Medical-Vocational Guidelines,
8 there were other jobs existing in significant numbers in the national economy that
9 Plaintiff could perform. Tr. 24-25. The ALJ thus determined that Plaintiff was not
10 under a disability within the meaning of the Social Security Act at any time
11 through the date of her decision, September 12, 2011. Tr. 25. The ALJ indicated
12 that since she found that Plaintiff would not be disabled if he stopped the substance
13 use, Plaintiff's substance use disorder was a contributing factor material to the
14 determination of disability. Tr. 25.

15 ISSUES

16 The question presented is whether substantial evidence exists to support the
17 ALJ's decision denying benefits and, if so, whether that decision is based on
18 proper legal standards. Plaintiff contends he is more limited from a psychological
19 standpoint than what was determined by the ALJ. ECF No. 15 at 9-16. Plaintiff
20 specifically argues the ALJ erred by failing to properly consider the opinions of
21 certain treating and examining medical sources and instead relying on the opinions
22 of a non-treating, non-examining medical professional when determining
23 Plaintiff's mental RFC. *Id.*

24 DISCUSSION

25 A. Plaintiff's Credibility

26 While Plaintiff has not challenged the ALJ's finding that Plaintiff is not fully
27 credible, Tr. 19, the undersigned finds the ALJ's credibility determination
28 significant in this case.

1 The ALJ indicated several reasons why Plaintiff was not entirely credible:
 2 objective evaluations contradicted the impairments Plaintiff reported, multiple
 3 medical providers found evidence of symptom exaggeration, some of Plaintiff's
 4 symptoms were caused by substance abuse and Plaintiff did not always disclose his
 5 substance abuse to medical providers, Plaintiff's activities were inconsistent with
 6 the degree of limitation alleged, and Plaintiff improved with treatment after he
 7 stopped using substances. Tr. 19-20. These reasons are fully supported by the
 8 record, and the ALJ's determination that Plaintiff's statements were not fully
 9 credible is uncontested by Plaintiff. *See Paladin Assocs., Inc. v. Mont. Power Co.*,
 10 328 F.3d 1145, 1164 (9th Cir. 2003) (issues not specifically and distinctly
 11 contested in a party's opening brief are considered waived). Since Plaintiff was
 12 properly found by the ALJ to be not entirely credible, the ALJ appropriately
 13 accorded little weight to medical reports based primarily on Plaintiff's subjective
 14 complaints. *See Tonapetyan v. Halter*, 242 F.3d 1144, 1149 (9th Cir. 2001) (a
 15 physician's opinion premised primarily on a claimant's subjective complaints may
 16 be discounted where the record supports the ALJ's discounting of the claimant's
 17 credibility); *Morgan v. Comm'r. of Soc. Sec. Admin.*, 169 F.3d 595, 602 (9th Cir.
 18 1999) (the opinion of a physician premised to a large extent on a claimant's own
 19 account of symptoms and limitations may be disregarded where they have been
 20 properly discounted).

21 **B. Mental Limitations**

22 Plaintiff argues that limitations assessed by Bill Gibson, ARNP, Ph.D.,
 23 Douglas Lane, Ph.D., and William Greene, Ph.D., reflect greater restrictions from a
 24 psychological standpoint than assessed by the ALJ, and the ALJ erred by not
 25 according these medical professionals greater weight. ECF No. 14 at 9-16.
 26 Plaintiff contends the ALJ erred by instead according significant weight to the
 27 opinions of the medical expert, Joseph Cools, Ph.D., when assessing Plaintiff's
 28 mental limitations. *Id.*

1 In a disability proceeding, the courts distinguish among the opinions of three
2 types of physicians: treating physicians, physicians who examine but do not treat
3 the claimant (examining physicians) and those who neither examine nor treat the
4 claimant (nonexamining physicians). *Lester v. Chater*, 81 F.3d 821, 839 (9th Cir.
5 1996). The Ninth Circuit has held that “[t]he opinion of a nonexamining physician
6 cannot by itself constitute substantial evidence that justifies the rejection of the
7 opinion of either an examining physician or a treating physician.” *Lester*, 81 F.3d
8 at 830. Rather, an ALJ’s decision to reject the opinion of a treating or examining
9 physician, may be based in part on the testimony of a nonexamining medical
10 advisor. *Magallanes*, 881 F.2d at 751-55; *Andrews v. Shalala*, 53 F.3d 1035, 1043
11 (9th Cir. 1995). The ALJ must also have other evidence to support the decision
12 such as laboratory test results, contrary reports from examining physicians, and
13 testimony from the claimant that was inconsistent with the physician’s opinion.
14 *Magallanes*, 881 F.2d at 751-52; *Andrews*, 53 F.3d 1042-43. Moreover, an ALJ
15 may reject the testimony of an examining, but nontreating physician, in favor of a
16 nonexamining, nontreating physician only when he gives specific, legitimate
17 reasons for doing so, and those reasons are supported by substantial record
18 evidence. *Roberts v. Shalala*, 66 F.3d 179, 184 (9th Cir. 1995).

19 Dr. Cools testified as a medical expert at the administrative hearing. Tr. 38-
20 48. The record reflects that Plaintiff had serious problems with alcohol and drug
21 dependence,¹ which he had not always accurately disclosed to medical providers.
22 Tr. 20. Dr. Cools testified that when Plaintiff began the recovery process at the
23 substance abuse center in 2011, his health status improved dramatically. Tr. 42.
24 Plaintiff became more active; regained stress management skills; and was once
25

26 ¹On November 18, 2010, Plaintiff reported his substance abuse began as
27 early as age 12 for drugs (marijuana and methamphetamine) and prior to age 16 for
28 alcohol. Tr. 325.

1 again enjoying spending time with his son, being active on his dirt bike, visiting
2 his family and going to self-help groups. Tr. 42. Dr. Cools noted that when
3 Plaintiff was off alcohol and drugs, Plaintiff's mental status improved with very
4 little medication. Tr. 45-46. Dr. Cools further indicated Plaintiff did not have
5 relationship problems other than those generated by his usage of drugs and alcohol.
6 Tr. 47. Dr. Cools testified that absent the impact of the alcohol and drug abuse,
7 Plaintiff was doing reasonably well. Dr. Cools specifically opined that, absent the
8 impact of drugs and alcohol, Plaintiff's restrictions of activities of daily living
9 would be mild, restrictions of social functioning would be moderate, difficulties
10 maintaining concentration, persistence and pace would be mild, and there would be
11 no episodes of decompensation. Tr. 46-47. The ALJ accorded Dr. Cools' opinion
12 significant weight. Tr. 21.

13 As noted above, "[t]he opinion of a nonexamining physician cannot by itself
14 constitute substantial evidence that justifies the rejection of the opinion of either an
15 examining physician or a treating physician." *Lester*, 81 F.3d at 830. In this case,
16 while the ALJ accorded significant weight to the testimony of the medical expert,
17 substantial evidence in addition to Dr. Cools' testimony justifies the ALJ's
18 rejection of those portions of medical reports which are not consistent with the
19 ALJ's RFC determination. *See infra*.

20 First, the testimony of Dr. Cools is consistent with the testimony of
21 Plaintiff's grandfather, Robert Durham. Tr. 20. Mr. Durham testified Plaintiff
22 previously had issues with drugs and alcohol, but since Plaintiff entered and
23 completed substance abuse treatment, there were no longer issues with Plaintiff's
24 anger and frustration. Tr. 61, 63-64. Mr. Durham indicated that Plaintiff's
25 medication was "absolutely" working and there was "no question" that Plaintiff
26 had made significant progress since completing treatment. Tr. 64.

27 The testimony of Dr. Cools is also fairly consistent with the report of
28 examining medical professional Joyce Everhart, Ph.D. Tr. 21. The ALJ indicated

1 that Dr. Everhart's opinion was accorded weight because it was well supported by
2 her clinical findings and generally consistent with the medical record.² Tr. 21.

3 On May 5, 2010, Dr. Everhart reported Plaintiff was able to complete his
4 activities of daily living without assistance, was able to do his own cooking,
5 cleaning and laundry, and could take care of his personal hygiene. Tr. 248. Dr.
6 Everhart indicated Plaintiff did not present as depressed, anxious or angry and
7 there was no indication of agitation. Tr. 248. Based on the mental status
8 examination, Dr. Everhart concluded Plaintiff's attention, concentration and
9 intellectual ability were within normal limits, there was no suggestion of difficulty
10 with executive functioning, and Plaintiff retained the ability to listen, understand,
11 remember and follow simple directions. Tr. 248. Dr. Everhart did opine that
12 Plaintiff may have some difficulty with complex multistep tasks and was likely to
13 do best if he did not have to interact with the public, supervisors or coworkers;
14 however, Dr. Everhart also found that Plaintiff's persistence was good, Plaintiff
15 remained on task, and Plaintiff did not appear easily distracted. Tr. 248.

16 Plaintiff reported to Dr. Everhart that the main reason he was unable to work
17 at any job was "[t]he repetition of doing the same thing every day. I get bored.
18 Then I start faking sick and end up losing my job. It might be different if I had a
19 job that had different tasks or was a mechanics job." Tr. 247. Plaintiff's report of
20 getting bored with a job and then faking sickness and the potential that things
21 would be different if he obtained a more interesting job conflicts with his claim of
22 disabling limitations preventing him from working.

23
24 ²Of significance, while Plaintiff reported to Dr. Everhart that his marijuana
25 use began at age 13 to 14 and alcohol abuse began at age 17, there is no mention of
26 Plaintiff's documented methamphetamine use in Dr. Everhart's report. Tr. 244.
27 Accordingly, it is apparent Dr. Everhart did not consider Plaintiff's history of
28 methamphetamine abuse in her examination of Plaintiff.

1 State agency reviewing physician, Eugene Kester, M.D., reported on June
2 19, 2010, that Plaintiff was able to perform simple work, work with others
3 superficially and adjust to changes in the work place periodically, set goals
4 independently, avoid hazards and travel. Tr. 266. On October 1, 2010, James
5 Bailey, Ph.D., reviewed the record and affirmed Dr. Kester's opinion. Tr. 268.
6 The ALJ gave weight to the state agency mental assessments, finding their
7 opinions were largely consistent with the medical record. Tr. 21. The state agency
8 reports are also fairly consistent with Dr. Cools' testimony.

9 Between February 2007 and May 2009, Plaintiff was seen five times by Bill
10 Gibson, ARNP, Ph.D. On May 28, 2009, Dr. Gibson wrote a letter which stated
11 Plaintiff was unable to maintain consistent employment. Tr. 220. However, it is
12 undisputed that Dr. Gibson's assessments were furnished during a period of
13 consistent substance abuse by Plaintiff, yet Dr. Gibson never mentioned Plaintiff's
14 drug and/or alcohol abuse in his reports. Tr. 21-22, 214-220. It is therefore
15 apparent that Dr. Gibson's assessments reflect Plaintiff's condition while,
16 apparently unbeknownst to Dr. Gibson, Plaintiff was abusing drugs and/or alcohol.
17 In this case, the ALJ concluded that if Plaintiff's substance use was taken into
18 consideration, Plaintiff met Sections 12.04 and 12.09 of the listed impairments and
19 was thus disabled. Tr. 16. Accordingly, the ALJ's determination is essentially
20 consistent with Dr. Gibson's opinion in his May 28, 2009, letter. Tr. 220.

21 In any event, Dr. Gibson's medical reports of record do not reflect the level
22 of limitation he notes in the May 28, 2009, letter. On February 16, 2007, Dr.
23 Gibson indicated Plaintiff continued to be less irritable and had less mind racing
24 since being medicated. Tr. 214. Plaintiff was diagnosed with Bipolar, NOS, and
25 given a global assessment of functioning (GAF) score of 64, indicative of only
26 mild symptoms or "some difficulty in social, occupational, or school functioning,
27 but generally functioning pretty well." *See* Diagnostic and Statistical Manual of
28

1 Mental Disorders, 32 (4th ed. 1994).³ On March 30, 2007, Dr. Gibson noted that
 2 Plaintiff seemed “quite stable” and gave Plaintiff a GAF score of 66. Tr. 215. On
 3 January 3, 2008, Plaintiff reported some mind racing and irritability; however, Dr.
 4 Gibson again assessed a GAF score of 66. Tr. 217. On April 29, 2009, Plaintiff
 5 reported depression and hyposomnia. Tr. 218. Dr. Gibson gave Plaintiff a GAF
 6 score of 55⁴ on this occasion. Tr. 218. On May 28, 2009, Plaintiff reported he had
 7 stopped all medications. Tr. 219. Dr. Gibson again assessed a GAF score of 55,
 8 indicative of moderate symptoms. Tr. 219. Dr. Gibson’s medical reports, as
 9 outlined above, do not document the “significant” barriers to employment he notes
 10 in the May 28, 2009, letter. Moreover, as indicated by the ALJ, the five medical
 11 reports produced by Dr. Gibson fail to mention clinical findings in support of his
 12 opinions. Tr. 22.

13 The ALJ gave little weight to Dr. Gibson’s opinions because he did not
 14 consider the impact of Plaintiff’s substance abuse and because he offered no
 15 clinical findings in support of his conclusions. Tr. 22-23. These are specific,
 16 legitimate reasons which are supported by the evidence of record. The ALJ
 17 appropriately accorded “little weight” to Dr. Gibson’s opinions.

18 James Hutchinson, M.S., under the supervision of Douglas Lane, Ph.D.,
 19

20 ³The GAF scale is no longer included in the fifth edition of the Diagnostic
 21 and Statistical Manual of Mental Disorders. *See* Diagnostic and Statistical Manual
 22 of Mental Disorders, 16 (5th ed. 2013) (“It was recommended that the GAF be
 23 dropped from the DSM-5 for several reasons, including its conceptual lack of
 24 clarity (i.e., including symptoms, suicide risk, and disabilities in its descriptors)
 25 and questionable psychometrics in routine practice.”).

26 ⁴A GAF of 60-51 reflects: Moderate symptoms or moderate difficulty in
 27 social, occupational, or school functioning. *See* Diagnostic and Statistical Manual
 28 of Mental Disorders, 32 (4th ed. 1994).

1 examined Plaintiff in March 2008. Tr. 285-294. In addition to Bipolar II Disorder,
2 the medical professionals diagnosed alcohol dependence, early partial remission,
3 and cannabis dependence, sustained full remission, and noted that alcohol use may
4 exacerbate Plaintiff's mood and psychotic symptoms and increase his vulnerability
5 to impulsive behavior. Tr. 286-287. Like the medical reports of Dr. Gibson, this
6 assessment was furnished during a period of consistent substance abuse by
7 Plaintiff; however, Plaintiff reported during the examination that he was not
8 actively abusing substances. Tr. 290-291. It is thus apparent that the assessment
9 reflects Plaintiff's condition while, unbeknownst to the examiners, Plaintiff was
10 abusing drugs and/or alcohol. Since the ALJ concluded that if Plaintiff's substance
11 use was taken into consideration, Plaintiff met Sections 12.04 and 12.09 of the
12 listed impairments, the Hutchinson/Lane assessment is essentially consistent with
13 the ALJ's determination. In addition, while the medical professionals accounted
14 for Plaintiff's marijuana and alcohol usage, the only mention of Plaintiff's
15 methamphetamine use is an indication that Plaintiff tried methamphetamine on a
16 few occasions as a teenager, but did not enjoy the drug. Tr. 291. Accordingly, as
17 noted by the ALJ, Tr. 22, it is apparent Plaintiff's documented history of
18 methamphetamine abuse was not adequately considered in this examination of
19 Plaintiff.⁵

20 The medical professionals filled out a psychological/psychiatric evaluation
21 form indicating Plaintiff had marked limitations in his ability to relate
22 appropriately to co-workers and supervisors and ability to respond appropriately to
23 and tolerate the pressure and expectations of a normal work setting. Tr. 287. They
24

25 ⁵Plaintiff informed Mr. Hutchinson/Dr. Lane that he sometimes experienced
26 delusions of reference (television ads talk to him and describe his situation), and
27 tactile hallucinations (bugs crawl on and penetrate his skin). Tr. 290. However,
28 the report does not attribute these symptoms to Plaintiff's methamphetamine use.

1 further noted Plaintiff seemed to be very limited in his capacity to maintain
2 employment at the time. Tr. 294. However, they estimated that the length of time
3 Plaintiff would be impaired to this degree would only be three to nine months. Tr.
4 288. The limitations would thus not meet the duration requirements of the Social
5 Security Act (one year). 42 U.S.C. § 1382c(a)(3)(A). Mr. Hutchinson/Dr. Lane
6 concluded that when Plaintiff “is able to more effectively control his mood and
7 anger symptoms he will likely be able to engage in occupational responsibilities.”
8 Tr. 294.

9 The Hutchinson/Lane report also indicated that the MMPI-2 testing
10 suggested Plaintiff provided an invalid profile due to over-reporting or
11 exaggeration of symptoms. Tr. 292. It was noted that the invalidity of the profile
12 may have been the result of Plaintiff’s level of education. However, the results of
13 the mini mental status exam “fell within normal limits,” and it was noted that
14 Plaintiff “exhibited grossly normal attentional and concentration abilities, and his
15 short and long term memory appeared to be grossly intact.” Tr. 293. Other
16 medical reports of record also showed that Plaintiff was of average intelligence.⁶
17 The Hutchinson/Lane report indicates it was possible Plaintiff exaggerated
18 legitimate symptoms, yet, as noted by the ALJ, the report does not account for
19 Plaintiff’s symptom exaggeration. Tr. 22.

20 The ALJ further indicated that the Hutchinson/Lane report was largely based
21 on Plaintiff’s self-report. Tr. 22. As stated in Section A, since Plaintiff was
22 properly found by the ALJ to be not entirely credible, the ALJ appropriately
23 accorded little weight to a medical report based primarily on Plaintiff’s subjective
24 complaints. *See Tonapetyan*, 242 F.3d at 1149.

25
26 ⁶Dr. Greene indicated that “[Plaintiff’s] nonverbal reasoning abilities and his
27 verbal comprehension skills are comparable. [Plaintiff’s] abilities across all
28 domains are comparable to those of his peers.” Tr. 303, 325.

1 The ALJ indicated Mr. Hutchinson/Dr. Lane did not adequately address the
2 role of substance abuse, their opinion was largely based on Plaintiff's self-report,
3 they did not consider Plaintiff's history of methamphetamine abuse, and Plaintiff's
4 score on the MMPI-2 was invalid due to over-reporting or exaggeration of
5 symptoms, but Mr. Hutchinson/Dr. Lane did not address how the invalid MMPI-2
6 score affected the limitations they assessed. Tr. 22. These are specific, legitimate
7 reasons which are supported by the evidence of record. The ALJ appropriately
8 accorded "little weight" to the Hutchinson/Lane report.

9 The record reflects three examinations of Plaintiff by William Greene, Ph.D.
10 Tr. 295, 308, 323. On November 25, 2008, Plaintiff was examined by Kathy
11 Jamieson-Turner, M.S., under the supervision of Dr. Greene. Tr. 295-307. No
12 cognitive limitations and only moderate social limitations were noted. Tr. 297.
13 Plaintiff's performance on the Personality Assessment Inventory (PAI) indicated
14 considerable distortion and resulted in an inaccurate reflection of Plaintiff's
15 objective clinical status. Tr. 305-306. In fact, Plaintiff's grandfather reviewed the
16 results of the PAI during the examination and mentioned that Plaintiff's responses
17 had not been accurate. Tr. 306.

18 On June 8, 2010, Dr. Greene indicated Plaintiff had a marked limitation in
19 his ability to relate appropriately to co-workers and supervisors, but was otherwise
20 only mildly or moderately limited. Tr. 311. Nevertheless, Dr. Greene estimated
21 that the length of time Plaintiff would be impaired to this degree would only be six
22 to nine months. Tr. 312. The limitations assessed by Dr. Greene on June 8, 2010,
23 would thus not meet the duration requirements of the Social Security Act (one
24 year). 42 U.S.C. § 1382c(a)(3)(A). Dr. Greene opined that if Plaintiff participated
25 in structured counseling and alcohol and drug treatment there was a possibility
26 Plaintiff could improve his lifestyle and become a productive individual. Tr. 313.
27 Dr. Greene's theory in this regard has been proven accurate. As noted above, Dr.
28 Cools testified that when Plaintiff began the recovery process at the substance

1 abuse center in 2011, Plaintiff's health status improved dramatically. Tr. 42.
2 Plaintiff's grandfather echoed Dr. Cools' testimony in this regard. Tr. 63-64.

3 On November 18, 2010, Dr. Greene examined Plaintiff for a third time. Tr.
4 323-338. Dr. Greene indicated that "[f]or the first time today" Plaintiff admitted
5 he had abused methamphetamine. Tr. 325, 327. It was noted that Plaintiff was
6 currently attending inpatient alcohol/drug treatment and had completed 30 days of
7 the program. Tr. 325, 327. Dr. Greene indicated the mood swings described by
8 Plaintiff "are among similar symptoms to those of withdrawal from
9 Methamphetamine, which can last for at least 2 years since last use, which in this
10 case was [reportedly] in March 2010." Tr. 327. Dr. Greene also noted that
11 Plaintiff's methamphetamine abuse began at the same time he was first diagnosed
12 with Bipolar Disorder. Tr. 327. Dr. Greene reiterated that if Plaintiff participated
13 in structured counseling and alcohol and drug treatment there was a possibility
14 Plaintiff could improve his lifestyle and become a productive individual. Tr. 327.
15 Again, it is confirmed by the testimony of Dr. Cools and Plaintiff's grandfather
16 that Plaintiff did improve after completing treatment.

17 Dr. Greene noted on this occasion that the MMPI and PAI test scores were
18 invalid and indicated the reason for Plaintiff's inability to produce valid MMPI's
19 or PAI's was not his lack of verbal skills. Tr. 324. Dr. Greene still opined that
20 Plaintiff had moderate cognitive and social limitations. Tr. 325-326. Nevertheless,
21 Dr. Greene estimated that the length of time Plaintiff would be impaired to the
22 degree he assessed on November 18, 2010, would only be six months. Tr. 326.

23 As held by the ALJ, it is apparent Dr. Greene's early examinations did not
24 adequately consider Plaintiff's substance abuse problems; specifically, the effects
25 of Plaintiff's methamphetamine abuse. Tr. 23. It was not until his final
26 examination with Dr. Greene that Plaintiff admitted "[f]or the first time" that he
27 had abused methamphetamine. Tr. 325, 327. At that time, Dr. Greene indicated
28 Plaintiff's methamphetamine abuse reportedly began at the same time he was first

1 diagnosed with Bipolar Disorder and that the mood swings described by Plaintiff
2 “are among similar symptoms to those of withdrawal from Methamphetamine.”
3 Tr. 327. Consistent with the ALJ’s finding, Tr. 23, Dr. Greene’s November 18,
4 2010 report specifies that his first two examinations did not consider the true
5 impact of Plaintiff’s substance abuse issues.

6 During the final examination, Plaintiff’s MMPI and PAI test scores were
7 deemed invalid, Tr. 324, yet Dr. Greene did not address the effects of possible
8 symptom exaggeration on his opined limitations. The ALJ also appropriately
9 considered this factor when assessing Dr. Greene’s medical reports. Tr. 23.

10 In any event, at the final examination, Plaintiff was in the process of
11 participating in substance abuse treatment, and Dr. Greene estimated that the
12 length of time Plaintiff would be impaired to the degree he assessed would only be
13 six months. *See* 42 U.S.C. § 1382c(a)(3)(A). Dr. Greene opined that if Plaintiff
14 participated in structured counseling and alcohol and drug treatment there was a
15 possibility Plaintiff could improve his lifestyle and become a productive
16 individual. Tr. 327. As noted above, this opinion was proven accurate as both
17 Plaintiff’s grandfather and Dr. Cools testified that Plaintiff’s health status
18 improved dramatically after completing substance abuse treatment in 2011. Tr. 42,
19 63-64.

20 The ALJ gave Dr. Greene’s opinions some, but not great, weight. Tr. 23.
21 The ALJ indicated she only accorded his opinions some weight because Dr.
22 Greene’s November 2008 and June 2010 opinions did not adequately consider the
23 effects of methamphetamine abuse and Dr. Greene’s November 2010 did not
24 adequately consider the effects of possible symptom exaggeration on the opined
25 limitations. Tr. 23. These are specific, legitimate reasons which are supported by
26 the evidence of record.

27 It is the responsibility of the ALJ to determine credibility, resolve conflicts
28 in medical testimony and resolve ambiguities. *Saelee v. Chater*, 94 F.3d 520, 522

(9th Cir. 1996). The Court has a limited role in determining whether the ALJ's decision is supported by substantial evidence and may not substitute its own judgment for that of the ALJ even if it might justifiably have reached a different result upon de novo review. 42 U.S.C. § 405(g). Where, as here, the ALJ has made specific findings justifying a decision, and those findings are supported by substantial evidence in the record, our role is not to second-guess that decision. *Fair v. Bowen*, 885 F.2d 597, 604 (9th Cir. 1989). Based on the foregoing, the ALJ did not err by rejecting those portions of medical reports which are not consistent with the ALJ's RFC determination and for according weight to the opinion of the medical expert, Dr. Cools. The ALJ's rationale is supported by substantial record evidence. *Roberts*, 66 F.3d at 184. The substantial weight of the record evidence supports the ALJ's determination in this case.

CONCLUSION

Having reviewed the record and the ALJ's findings, the Court concludes the ALJ's decision is supported by substantial evidence and is not based on legal error. Accordingly,

IT IS ORDERED:

1. Defendant's Motion for Summary Judgment, **ECF No. 17**, is **GRANTED**.
 2. Plaintiff's Motion for Summary Judgment, **ECF No. 15**, is **DENIED**.
- The District Court Executive is directed to file this Order and provide a copy to counsel for Plaintiff and Defendant. Judgment shall be entered for **DEFENDANT** and the file shall be **CLOSED**.

DATED November 14, 2013.



JOHN T. RODGERS
UNITED STATES MAGISTRATE JUDGE